

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONALD EUGENE MITCHELL, JR.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-CV-298-JHP-FHM
)	
MARTY SIRMONS, Warden,)	
)	
Respondent.)	

ORDER

On May 9, 2006, Petitioner, a state inmate appearing *pro se*, filed his notice of appeal (Dkt. # 16), indicating his appeal from the Court's Order and Judgment (Dkt. ## 12 and 13), both entered March 23, 2006, dismissing his petition for writ of habeas corpus as time-barred. By Order filed April 10, 2006 (Dkt. # 14), the Court denied Petitioner's Rule 59(e) motion to alter or amend judgment. Along with his notice of appeal, Petitioner also filed a motion for certificate of appealability and for leave to proceed on appeal *in forma pauperis* (Dkt. # 17). By Order filed May 12, 2006 (Dkt. # 20), the Court denied a certificate of appealability and directed Petitioner to either pay the full appellate filing fee or file an amended motion for leave to proceed *in forma pauperis* including the required Statement of Institutional Accounts. On June 5, 2006, Petitioner filed an amended motion for leave to proceed on appeal *in forma pauperis* (Dkt. # 22) as directed by the Court.

Based on representations in the amended motion for leave to proceed on appeal *in forma pauperis*, the Court finds Petitioner is currently without funds sufficient to prepay the appellate filing fee. Therefore, his motion to proceed *in forma pauperis* shall be granted and he shall be allowed to proceed on appeal without prepayment of the filing fee.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's motion for leave to

proceed on appeal *in forma pauperis* (Dkt. # 17), as amended (Dkt. # 22), is **granted**. The Clerk shall send a copy of this Order to the Tenth Circuit Court of Appeals.

SO ORDERED THIS 6th day of June 2006.



James H. Payne
United States District Judge
Northern District of Oklahoma